

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 88140-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
This 21st day of April 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On February 26, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on March 4, 2008.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on March 18, 2008.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) through the Michigan Education Special Services Association (MESSA), an underwritten group. Her coverage is defined in the booklet "MESSA Choice II Group Insurance for School Employees" (the booklet).

The Petitioner underwent a computerized dynamic posturography (CDP) test on August 16, 2007. The charge for this test was \$360.00. BCBSM denied payment because it believed the test is experimental or investigational for treatment of the Petitioner's condition.

The Petitioner appealed BCBSM's denial. After a managerial-level conference on February 4, 2008, BCBSM did not change its decision and issued a final adverse determination dated February 15, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's CDP test?

IV ANALYSIS

Petitioner's Argument

The Petitioner underwent a medical evaluation by XXXXX at the XXXXX because she was experiencing dizziness and imbalance. The evaluation included the CDP test, which was designed to test postural stability and provide information about motor control and balance function under varying conditions. Dr. XXXXX said the test is not experimental or investigational and is covered by many carriers, including Blue Cross and Blue Shield of XXXXX.

The Petitioner believes that her CDP test was medically necessary and BCBSM should be required to pay for it.

BCBSM's Argument

BCBSM based its denial on the provision in the booklet (page 51) that says: "We do not pay for experimental or investigational drugs or services." The booklet further defines "experimental or investigational" as "A service that has not been scientifically demonstrated to be as safe and effective for treatment of the patient's condition as conventional or standard treatment." BCBSM's medical consultant indicated that the CDP test is considered investigational because its efficacy has not been proven.

BCBSM believes that it is not required to cover the Petitioner's CDP test since it is investigational.

Commissioner's Review

The booklet sets forth the covered benefits. In *Section 10: Exclusions and Limitations*, it says (pages 48-49):

The following exclusions and limitations apply to the MESSA Choices program. These are in addition to limitations appearing elsewhere in this coverage booklet.

* * *

- services and supplies that are not medically necessary according to accepted standards of medical practice including any services which are experimental or investigational.

A procedure that is not the standard of care and has not been demonstrated to be as safe and effective as conventional or standard treatment is considered to be investigational or experimental and is not a covered benefit under the terms of the Petitioner's coverage.

The question of whether the Petitioner's CDP test was experimental or investigational for treatment of her condition was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is certified as a diplomate by the American Board of Otolaryngology; is a fellow of the Royal College of Surgeons; is published in the peer reviewed literature; and is in active practice.

The IRO reviewer said that

The evaluation of balance disorders begins with a careful history and physical examination. At the completion of the history and physical (H&P) the diagnosis is generally clear in 80-90% of cases. An audiometric evaluation is routinely obtained, and is considered medically appropriate and necessary, to lend strength to the working diagnosis and assess any abnormalities that may suggest a different diagnosis. If further evaluation is required, this regularly comprises a magnetic resonance imaging (MRI) scan (to evaluate the 8th cranial nerve neurovascular complex and the cerebello-pontine angle specifically), audiometric brainstem response audiometry (ABR), and video-nystagmogram (VNG-to evaluate the vestibular end-organ and vestibular neural pathways), and computerized dynamic posturography (CDP-to evaluate the synthesis of sensory input required to maintain balance as well as evaluate for malingering). The literature is replete with peer-reviewed publications validating the utility of CDP. As the literature

cited below demonstrates, over large numbers of patients CDP has proven efficacy in a variety of clinical applications, including the differential diagnosis of patients with vestibular schwannoma, Meniere's syndrome also known as [Meniere's disease], benign paroxysmal positional vertigo, and other peripheral and central vestibular disorders, as well as fall-risk identification and identification of patients suspected of malingering. The meta-analysis by DiFabio documented the sensitivity and specificity of CDP, particularly for patients with a central nervous system component to their disease. This meta-analysis confirmed the usefulness of CDP as an addition to other standard vestibular tests. This procedure has been established over many years in use, and is now commonplace in Otolaryngologic practice, particularly among Neurotologists.

The IRO reviewer concluded that the current peer-reviewed published literature supports the use of CDP and therefore it is not experimental or investigational for the Petitioner's condition.

While the Commissioner is not required in all instances to accept the IRO's recommendation, it is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

Therefore, the Commissioner accepts the opinion of the IRO and finds that the CDP test the Petitioner received was not experimental or investigational.

V ORDER

Respondent BCBSM's February 15, 2008, final adverse determination is reversed. BCBSM shall cover the Petitioner's CDP test provided on August 16, 2007, within 60 days of the date of this Order, and shall provide the Commissioner with proof of payment no later than seven days after payment is made.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered

person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.